

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA <i>ex rel.</i>)	
JEFFREY H. LIEBMAN and DAVID M.)	
STERN, M.D.,)	Case No.: 3:17-cv-00902
)	
Plaintiff-Relators,)	JUDGE CAMPBELL
)	MAGISTRATE JUDGE HOLMES
v.)	
)	
METHODIST LE BONHEUR HEALTHCARE)	
and METHODIST HEALTHCARE-MEMPHIS)	
HOSPITALS,)	
)	
Defendants.)	

JOINT CASE RESOLUTION AND STATUS REPORT AND NOTICE OF MEDIATION

Pursuant to the Sixth Case Management Order (ECF No. 252), the parties submit the following joint case resolution and status report and notice of mediation:

A. STATUS OF FACT DISCOVERY

The deadline for the conclusion of fact discovery in this action is September 23, 2022. The parties are on track to complete fact discovery by this deadline. The parties have served and responded to written discovery.

The parties have commenced fact depositions. The United States and defendants, Methodist Le Bonheur Healthcare and Methodist Healthcare-Memphis Hospitals (“Methodist”) each have deposed non-party Erich Mounce, the former CEO of the West Clinic, P.C. (“West”) and the West Cancer Center. The United States also has deposed (i) the current CFO of Methodist, who also was the former CFO of Methodist University Hospital during the relevant time period, who Methodist also questioned; (ii) the former Methodist CFO, Chris McLean; and (iii) the former

Methodist President/CEO, Gary Shorb. The United States noticed a 30(b)(6) deposition of Methodist, and Methodist designated Mr. McLean, Mr. Shorb, and Mr. Ugwueke to testify regarding certain topics in the 30(b)(6) notice. A number of depositions are scheduled, including the deposition of the current Methodist President/CEO, Michael Ugwueke, and Drs. Schwartzberg, Ballo, Portnoy, Richey and Somer of West, as well as Scott Safriet from HealthCare Appraisers, Inc. (“HAI”), which provided the initial fair market valuation for the Management Services/Performance Improvement Agreement (“MSA”). The parties are amicably working on scheduling the remaining depositions of party and non-party witnesses.

B. KNOWN OR ANTICIPATED DISCOVERY DISPUTES

The parties presently have the following known or anticipated discovery disputes:

- (a) whether certain documents on Methodist’s privilege log are privileged, including communications with fair market value consultants and communications with Erich Mounce;
- (c) whether the United States may depose Methodist’s former Senior Vice President and Chief Legal Officer, who is Methodist’s current Executive Vice President and Chief Administrative Officer;
- (d) whether a Joint Defense Agreement between Methodist and West, who is not a defendant in this action, is a valid basis for West or Methodist to refuse to provide testimony about post-intervention discussions between Methodist and West, and whether the agreement, or any terms of the agreement, is itself discoverable; and
- (d) whether the parties have adequately responded to Requests for the Production of Documents, Interrogatories, and Requests for Admission.

If the parties cannot resolve any of the above disputes, they will file a motion in accordance with the Sixth Case Management Order.

C. OTHER CASE MANAGEMENT ISSUES

The United States may seek to depose certain witnesses for longer than the seven-hour limit in Fed. R. Civ. P. 30(d)(1). Both parties may seek to depose more than 10 witnesses per side.

At this time, the parties are attempting to resolve any disputes and scheduling issues amicably, and the case is otherwise on track according to the case management schedule and no further assistance from the Court is needed. If the parties cannot resolve any disputes, they will file a motion in accordance with the Sixth Case Management Order.

D. NOTICE OF MEDIATION

The parties have agreed to use Steve Altman, who has experience mediating False Claims Act matters, as a mediator. A virtual mediation is scheduled for September 30, 2022.

E. ATTEMPTS AT RESOLUTION

The parties have had general discussions about resolution of this matter as required by the Court. As noted above, mediation is scheduled for September 30, 2022.

Dated: August 15, 2022

MARK H. WILDASIN
United States Attorney
Middle District of Tennessee

s/ Kara F. Sweet
KARA F. SWEET
WYNN M. SHUFORD
U.S. Attorney's Office
Middle District of Tennessee
719 Church Street, Suite 3300
Nashville, TN 37203
(615) 736-5151
kara.sweet@usdoj.gov

wynn.shuford@usdoj.gov

Attorneys for United States

s/ Jerry E. Martin

JERRY E. MARTIN (TNBPR No. 20193)
SETH HYATT (TNBPR No. 31171)
Barrett, Johnston Martin & Garrison, LLC
414 Union Street, Suite 900
Nashville, TN 37219
Phone No. (615) 244-2202
jmartin@barrettjohnston.com
shyatt@barrettjohnston.com

s/ Bryan A. Vroon

BRYAN A. VROON, Esq. (Admitted *Pro Hac*)
Law Offices of Bryan A. Vroon, LLC
1380 West Paces Ferry Road, Suite 2270
Atlanta GA 30327
Phone No. (404) 441-9806
bryanvroon@gmail.com

s/ Edward D. Robertson, Jr.

EDWARD D. ROBERTSON, JR. (Admitted *Pro Hac*)
Bartimus Frickleton Robertson & Rader, P.C.
109b East High Street
Jefferson City, MO. 65101
Phone No. (573)659-4454
crobertson@bflawfirm.com

*Attorneys for Relators Jeffrey Liebman
and David Stern*

s/ Brian D. Roark

BRIAN D. ROARK
J. TAYLOR CHENERY
TAYLOR M. SAMPLE
HANNAH E. WEBBER
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
Phone No. (615) 742-6200
broark@bassberry.com
tchenery@bassberry.com

taylor.sample@bassberry.com
hannah.webber@bassberry.com

s/ Robert Salcido
ROBERT SALCIDO (Admitted *Pro Hac*)
Akin Gump Strauss Hauer & Feld LLP
2001 K Street, N.W.
Washington, D.C. 20006
Phone No. (202) 887-4095
rsalcido@akingump.com

*Attorneys for Defendants Methodist Le Bonheur Healthcare
and Methodist Healthcare-Memphis Hospitals*